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# The Eichmann Trial

JUSTICE GABRIEL BACH\*

## I. MY STORY

I am very often asked whether I am one of the survivors of the Holocaust, myself. To this I cannot say yes or no. I was born in Germany in a little town called Halberstadt, which is in the Harz Mountains in Sachsen-Anhalt, but at the early age of two months my family decided to leave Halberstadt. My father was active in heavy industry in Germany. He was an assistant in one of the many big copper and metal factories in Halberstadt, but two months after I was born we moved to Berlin, so I only knew Berlin while I was in Germany. My father was also one of the leading Zionists of Germany, so I was educated at a German school ironically named after Theodore Herzl—one of the founders and leaders of the Zionist movement: Theodore Herzl School on Adolf Hitler Square.

As a family, we were terribly lucky. We left Germany for Holland in 1938, two weeks before *Kristallnacht*. We then left Holland for Palestine in 1940, just one month before the German invasion. We came to Palestine on a ship called the “Patriarch,” which sunk on the next journey after that, killing 250 people. We were always sort of just one step ahead. What makes it even more chilling is that I went to this Jewish school in Germany, the Theodore Herzl School, but in Holland I went to a mixed school, which still had hundreds of Jewish students. My best friend in school in Holland, who was not Jewish, saw me twenty years later, in 1961, on television in the Eichmann trial. He

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\* Edited transcript of the author’s oral remarks at Loyola Law School, Los Angeles, CA, September 17, 2011. Justice Bach was on campus receiving the Rafael Lemkin Award honoring those committed to preventing genocide, September 15, 2011. Justice Bach was also the keynote speaker at the symposium “Perspectives on Genocide: The Adolf Eichmann Trial – Looking Back 50 Years Later,” held on September 16, 2011, at Loyola Law School, Los Angeles, California. The author’s remarks have been supplemented with remarks he made at other events throughout the week. The editors would like to thank Frank Tuerkheimer for his invaluable comments during the preparation of this account.

contacted me and I invited him to Israel. When we met he told me that after the war he found out that of all the Jewish pupils in our school, I am the only one who remained alive. They were all killed after the Germans entered Holland.

To make matters even more chilling, I later read in history books that between the outbreak of war in 1939 and March 1940, when we left Holland, Hitler had fixed, seven times, a date for the invasion of Holland, and every time he postponed it at the last minute. Once, the astrologists had told him that the stars were not favorable. Another time something on the BBC made the Nazis believe that the British suspected something. A number of times weather conditions were bad. So seven times when we were still there, Hitler had a precise date for the invasion of Holland, and every time he postponed it at the last minute. Then the eighth time when they did move in, we had just left.

Everyone thought that my father had a sort of sixth sense as to when to detach himself. So, when the German army under General Rommel marched through Libya and Egypt, approaching Palestine, everyone came to my father and asked, "Where do we move to now?" But my father responded that here is the last stop. I went to school in Palestine, and later I studied law in England at University College London, where I qualified as an English Barrister.

When we left Germany for Holland, I was about eleven years old. When we reached the Dutch border, some SS officer ordered us out with our luggage. We went to the barracks and there were some ten SS men with guns, and uniforms, standing around us, forcing us to open the luggage. They took everything out and threw it into every corner. But our train was ready to leave, so my father begged them to hold the train for a minute until our things were cleaned up. We could hear calls being made in the next room, and then an SS officer came out and said we could go. We quickly packed everything up and ran towards the train, which had already started to move. An SS officer ran up and kicked me in the behind, which helped me to get up the steps. I will never forget my father, my mother, my sister, and me sitting on our pieces of luggage in this corridor of the train. For a few minutes no one said a word, and then the Dutch customs official came. He was not particularly friendly, but he was civil, and I started to cry because someone in uniform was speaking to us like ordinary human beings. My father got champagne—we were safe in Holland, for the moment anyway.

A few years ago, in Israel, the German Ambassador to Israel called me out of the blue to tell me that the German government had awarded me one of their highest crosses of distinction. The Ambassador asked if

I would accept the award, and I asked, “Why do you think they want to give this to me?” He responded that it was for my work on the Eichmann trial. Plus, I had a very friendly relationship with the former German president and other German judges. I could not refuse. There was a nice meeting at the headquarters of the German Ambassador in Israel. He invited people from Germany, Israel, and elsewhere, and he spoke very nicely too, finally asking whether I wanted to say something. Maybe I should not have done it, but I couldn’t refrain: I told the story of that kick that I got on the behind—how I was literally kicked out of Germany. I said that somehow I feel that just as that kick was undeserved then, so is this cross of distinction undeserved now.

After I went to school in Palestine, I studied law in England, but came back and joined the army in Israel. After the army I worked in the legal department—first as defense counsel, then prosecutor, then later as a judge. I still am a justice of the supreme court of the army, somehow, on reserve. Amongst other things, I met my wife, Ruth, in the army.

After the army, I joined the State Attorney’s Office of Israel. The State Attorney of Israel is not just for criminal matters. The State Attorney of Israel represents every case in which the state is involved: criminal cases and civil cases involving the government are both covered by the State Attorney’s Office. There, I got dream cases: all the big espionage and international crime cases; a terrorist sent by Arafat to smuggle arms into Israel; the Australian who set fire to the Al-Aqsa mosque. I even worked on the case of the American gangster Meyer Lansky who wanted to become an Israeli citizen. I persuaded the Minister of Interior not to give him his citizenship, for which Lansky brought an action against the Israeli government, which I defended. I never managed to write anything about the trial because there was always one event right after another, and I don’t regret that.

Once I finished my work at the State Attorney’s Office, I handled the Eichmann case for two years from 1960 to 1962. Later, I became the Chief State Attorney of Israel, and then in 1982, I became a justice of the Supreme Court, where I was for fifteen years until I reached the mandatory retirement age.

## II. DETAILS OF EICHMANN EMERGE

Today, I want to share with you the two years that I spent with Eichmann at his trial. I knew a lot about Eichmann beforehand because of the Kasztner case. Rezso Kasztner was a leader of the Zionist movement in Hungary during the war, and negotiated with Eichmann to save about 1,400 Jews. Eichmann agreed to this for certain tactical

reasons, and Kasztner was tried in Israel as a traitor for negotiating principally to save his own family and friends. I was in charge of the case against Kasztner, and there I learned really quite a lot about Eichmann and his Jewish victims. Eichmann was kidnapped from the Argentine in 1960 by two Israeli agents and brought to Israel to stand trial. There are so many historical, legal, moral, and humanitarian angles of this, and my role in the trial saw all of them.

There are some personal and special moments from the trial that are difficult to forget, and will really give you some unique insight. The first moment was when the Israeli Prime Minister, Ben-Gurion, announced on the radio on May 23, 1960, that Adolf Eichmann, the person in charge of Jewish affairs in Germany, the focal point in the plan for the destruction of all the Jews in all Europe—the Holocaust—had been caught and would stand trial. That had a profound effect across the country. That was the first moment I heard of his capture, and it is difficult to forget.

I was Deputy State Attorney of Israel at the time, and two days later the Minister of Justice called me and asked if I would be the legal advisor to the Police Bureau carrying out the investigation against Eichmann. Of course I agreed. What was powerful was that for years we had been on the receiving end: only able to read, and to listen, and to hear things about the Holocaust. We could never do anything about what happened. But here we had an opportunity, in the most democratic and correct way, to present evidence in court against the person central during the whole war to the destruction of our people in Europe. That was special—satisfying, exciting, and sobering.

I was living in Jerusalem with my family and Eichmann was kept in a prison in the north of the country, not far away. The whole prison was vacated for him. There were thirty or forty policemen in charge of the investigation and I was the legal advisor with an office there. For nine months, I actually lived next to this prison, next to Eichmann. I also was his only contact with the outside world until his lawyers came. I let him know, when I came, that if he had some technical problems, or some formal things that he wanted to discuss, he could come to me. But I was not prepared to talk to him about the alleged offenses with which he was charged because then I might have to be a witness. I knew I would be one of the prosecutors in the case so I let him know that he could only speak to me if there was something technical that he wanted to discuss.

I will never forget my first visit with him. I was sitting in my office reading the autobiography of a man called Rudolf Hoess. Hoess

was Hitler's assistant and commander of the Auschwitz death camp where millions of people were killed, and where many Jews were sent to the gas chambers. Rudolf Hoess was hanged in 1948 (twelve years before Eichmann was caught) in Poland for doing his job as a commander of the Auschwitz camp. Before he was executed, Hoess wrote his biographical notes. On that day I was reading Hoess' description of how they had to kill a thousand Jewish children a day for many days, and how the children used to kneel sometimes asking to be spared, and he wrote "when my colleagues and I had to push the children into the gas chambers, my knees were getting a bit wobbly." But he added, "I always felt ashamed of this weakness of mine after I talked to Obersturmbannführer Adolf Eichmann because Eichmann explained to me that especially the children were to be killed first. He explained there was no logic in killing a generation of adults if you leave alive a generation of possible avengers to create that race again."<sup>1</sup> Ten minutes after I read that macabre logic, the policeman came to my office saying that Adolf Eichmann wanted to see me.

When I heard his steps outside, having just read that, and he came in and sat about a yard in front of me, it was difficult to keep a poker face. He wanted to discuss the question of appointing a lawyer for his defense. His family had suggested Dr. Robert Servatius, a lead defense counsel in the Nuremberg trials. He defended the Nazi Minister of Labor, Fritz Sauckel, and also the Nazi government in the Nuremberg trials. He was an expert. Eichmann wanted to know whether the Israeli government would agree to such a thing, and wanted to know what I thought. I told him yes that would be possible, and Servatius was a good choice because he was a real expert on Nazi matters. Also, I pointed out that if his family picked Servatius, then they should be trusted as doing what is best for him. So Eichmann decided, on that day, to appoint Servatius. That first meeting is difficult to ever forget.

It was difficult to get the right witnesses for the trial because, even though we had lists of survivors from the death camps, many of them did not want to testify. Many of them had kept quiet for years, not even talking to their children or friends about what happened. They wanted to push aside what happened and not hear or read or talk about it. They didn't want to be reminded of what happened.

Some did agree to testify, however. I remember one survivor we approached saying, "I'm the only survivor of our little township in Poland, and what happened to my family is no less important than what

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1. CONSTANTINE FITZGIBBON ET AL., *COMMANDANT OF AUSCHWITZ: THE AUTOBIOGRAPHY OF RUDOLF HOESS* (2000).

happened to anyone else. If you call me, I'm prepared to talk, but I'll talk for four, or five days. You won't be able to stop me. You can't make them keep me quiet." Of course we wanted not to take too long. We usually wanted a witness only to cover a certain point not covered by other witnesses, but it was difficult to limit them.

Three of us handled the case in court. The Attorney General of Israel at the time, Gideon Hausner, was the chief prosecutor. He was appointed after I was already active in collecting all the material. I was number two. Then, the District Attorney of Tel-Aviv, Yakov Bar-Or, he was number three. There were some other assistants who helped collect legal points and so on, but we were the ones who actually handled that case. There were also about thirty to forty policemen investigating the case. Every police officer had a particular country to investigate; or a particular topic like transportation, killing, theft of the property, etc. The German government was very cooperative and sent us all the existing files and we had to decide what to use or not. I instructed the police officers to bring me every evening whatever relevant documents they found that day. I then had to decide what to include as evidence, or not.

As I said, we didn't want the trial to take too long, so some of my colleagues thought we should limit our case to the documentary evidence with few witnesses, like at Nuremberg. I insisted, however, that there should be one live witness for every country. There is a difference when you read about what happened to 300,000, 700,000, 800,000 people from a country, than when you hear about it. There should be at least one live witness who creates the atmosphere—who tells of the fate of his family and friends; to describe the deportation and arrest process. Such an experience makes a difference when trying to understand what happened.

Attempts to save one particular Jewish person, or one family, were often brought before Eichmann. It was Eichmann's department, and his personal decision. Because the documents we received from the German government were in chronological order, an officer would give me the telegram asking Eichmann to save a Jewish life, but a few days would pass before the officer would find Eichmann's reply. In the interim, I would dream at night that Eichmann spared the person. There were requests from France, Holland, Greece, Slovakia; and I would dream that at least one of them was saved. But after a few days I would receive Eichmann's reply, and it was, without a single exception, fatal, and people were put to their death.

For example, one day the investigator responsible for France brought me a telegram from the German general in command of Paris to

Eichmann asking for clemency for a Jewish professor, Professor Weiss, who was a radar expert with patents on some radar inventions. The general pointed out that the German army needed to examine this man and compare his patents and inventions with the scientific research by the German army. The general therefore insisted that the professor and his wife should not be deported. When I read that, I thought surely this man would be spared for the sake of German defense, but a few days later I received Eichmann's reply, denying the request on principle. A few days later, a note was found saying that the German general had called Eichmann by telephone pointing out that he was a general of the army and his request should be honored. Eichmann answered that he was an Obersturmbannführer of the SS and the general's army rank meant nothing to him. A few days later, Eichmann wrote to the general that he had examined the matter further, and found that the German army had already taken over the professor's patents, and therefore there was no reason to postpone the deportation of the Jew for one more day. Finally, the file contained a note that Professor Weiss and his wife were sent to Auschwitz to their death.

The three prosecutors divided up questioning the witnesses, and I handled the witnesses and evidence for France. I had submitted into evidence the documents about Professor Weiss, and two days later my secretary told me that a young lady named Eliza Weiss was there to see me. I didn't know an Eliza Weiss, but when she came in, she told me that she was the daughter of Professor Weiss. She was a baby when the Nazis sent her parents to Auschwitz. Her parents apparently knew the Nazis were coming for them, so they had sent Eliza to the neighbors, who sent her to America where she then lived. She had seen that I had submitted these documents about her parents, and, not having even a picture of them asked if I knew how she could get one. This is one of those moments that stays with me.

As another example, one day the investigator for Holland brought me a telegram from the leader of the Fascist party there who wrote to Eichmann about twelve Jews who were members of the Fascist party (heaven knows how they existed) and therefore should not be transported. He argued that it would be demoralizing for the party if these loyal members were sent away. To make the request more attractive to Eichmann, the Fascist party leader suggested that these members could do intelligence work inside the Jewish community to help catch all the Jews in Holland. Again, I imagined that under those circumstances at least these people would be spared. But Eichmann again denied the request on principle, adding that he would wait three or



four weeks, if it would be demoralizing to the party to send them away this week. By then, Eichmann reasoned, people will be used to the deportation of the Jews from Holland.

Finally, as one more example, the Italian consul in Lithuania wrote to Eichmann that there was a Jewish Italian woman who was visiting her parents in Lithuania where she was caught by Nazi authorities and was scheduled to be sent to the death camps. The Italian consul wrote to Eichmann that this woman was the widow of a high-ranking Italian officer, who fell in battle, and was known throughout Italy as a war hero for his bravery and courage. The Italian authorities, therefore, insisted that this woman be given the chance to return to Italy. This was Italy—Germany's ally—and an Italian officer who fell fighting on the side of the Germans. So, again, I thought it must have been impossible for Eichmann to refuse this request. But Eichmann again denied the request, on principle, and his department saw to it that this woman was sent also to her death.

### III. THE TRIAL BEGINS

Even though we were representing our government, the three Israeli judges presiding over the trial were very strict with us and would not allow us to bring evidence that was not directly connected to Eichmann, even though we wanted to show as much as possible of the Holocaust in general. Luckily, the accused was Eichmann, and if I could have asked for one person to put on trial whose actions show what really happened during the Holocaust, no doubt I would have chosen Eichmann. More than even people of a higher rank, as head of the Jewish department of the Gestapo, Eichmann was responsible for every aspect of the Holocaust.

I investigated the Holocaust—the Gestapo, the SS, the security office of Germany—and there were lots of departments, each with its own leader. But throughout the war, the heads of department were rotated out every year or two. The only person who remained throughout as head of the Jewish department was Eichmann. He was never replaced because his superiors felt that he was a man who completely—as if obsessed—identified with this terrible, cruel scheme. He was not just someone who followed orders. In fact he countermanded orders of superiors (even Hitler) when it destroyed just a few Jews.

Nonetheless, not every one of the millions of documents we had from the German government had a connection to Eichmann, even though the information they contained was no less shocking. They still

caused me sleepless nights, unable to understand how such things could have happened. For example, one day I received a file from the Ministry of Health in Germany. It was a letter from a director general of the Ministry, a doctor, writing about a milk bank they had at the hospital. Like a blood bank, the milk bank was where women deposited their breast milk if their babies had died or the women produced more than they needed, and mothers who couldn't make milk could use this bank for their babies. This director general wrote to his minister that he had information that a woman who was one-quarter Jewish had donated her milk without disclosing that she was one-quarter Jewish. He asked for advice on what to do with this woman. On the one hand, he thought to make a show of punishing her to deter others; but he was worried about how upsetting it might be to the non-Jewish mothers worried that their babies had been poisoned by this Jewish milk. So, this doctor proposed just sending her quietly away to a concentration camp.

This was an educated man, with a university degree—a doctor—proposing this problem and solution. I was a child in Germany and I sometimes saw Hitler's speeches and the hysterical reactions they provoked, so I can understand how these things could happen. But for this educated man, this doctor, in the quiet of his office to be able write something like that, is inconceivable to me.

Another piece of inadmissible evidence of the horrors of the Holocaust had to do with the gas vans they used before they had the gas chambers in Auschwitz and other concentration camps. Jewish men, women and children were put in these big cars and trucks, and the exhaust fumes were pumped inside, instead of letting them escape outside. These trucks drove about thirty or forty kilometers, and the people inside slowly suffocated to death. After thirty or forty kilometers, the bodies were just thrown into some general cemetery.

One day during the investigation, I came across a document from an engineer who wrote a description of how these vans worked: how they used exhaust, how they drove, how they disposed of the bodies. The engineer then asked that, for humanitarian reasons, something be done for the poor SS officers driving the vans who had to hear the shrieks in the back, growing ever softer as they drove on. The engineer suggested installing a sound proof wall he had invented to put behind the driver. When I started reading this document, I had assumed that the humanitarian effort the engineer would be asking for would be for these poor people slowly choking to death. But no - It was to protect the poor SS drivers. Reading these things was no less shocking than anything else I read, but they were inadmissible at trial.

At the trial, Eichmann said he thought what was done to the Jews was one of the most serious crimes committed in history. Journalists and experts have asked me whether I thought Eichmann meant that seriously. When considering the punishment, if his regret had been sincere that might have made a difference. But I believe that it was mere lip service, not to be taken seriously. Even a man like that might change his mind sixteen years after the end of the war. It is possible that his eyes were opened, but we had proof that his opinion had not changed in 1956, eleven years after the war, when he was already in Argentina.

There, Eichmann was interviewed by Willem Sassen, a fascist Dutch journalist, who came to Argentina to write Eichmann's biographical notes. The idea was to publish these notes after Eichmann's death, sort of as life insurance for his family. After Eichmann was caught, Sassen gave the notes to *Life* magazine. The typewritten pages Sassen provided to *Life* contained Eichmann's corrections in his own handwriting, so there was no doubt about their authenticity.<sup>2</sup> In the transcript, Eichmann said that he knew this man came from Holland, and he just cried thinking of the beautiful sight of the packed trains of the Jews from Holland leaving towards Auschwitz. At this, the Dutchman asked Eichmann if he felt sorry for what he had done. Eichmann replied that he felt sorry for one thing: that he wasn't hard enough; that he wasn't tough enough; that he didn't fight the damn interventionists enough. And now the result is the creation of the state of Israel, and the reemergence of the Jewish race there. So if Eichmann said this in 1956, eleven years after the war, but five years later, in 1961, when he is fighting for his life, he describes it as "the greatest crime committed in history," I think I am justified in being skeptical.

Throughout the investigation, I received documents from all over the world, but I was particularly interested in information from Poland where the death camps were. But at the time of the trial, the Polish government was very anti-Israeli, and they threatened to punish anyone who cooperated with the investigation in Israel. But there were a number of Poles who wanted to help and sent us information and important documents anonymously. One day I received an anonymous envelope—without a signature or any verification of the source—containing many typewritten pages, listing the number of Jews who

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2. The Court declined to admit Sassen's clean transcript, or the recordings, but it did admit the transcript containing Eichmann's notes. See *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem, Israel 1569–71* (State of Israel, Ministry of Justice, Jerusalem 1992), available at <http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/>.

arrived in Auschwitz everyday in 1942 and 1943, and the numbers written on their arms. In a criminal case, you cannot use such unauthenticated documents as evidence. But this information was just so important because it pertained to hundreds of thousands, over a million people—how they were killed, how they got there, what their numbers were. I met with all of the investigating officers, showed them these documents, and asked how I could make this admissible evidence in court. There was silence. But then I said maybe we do the opposite of what we usually do which is to authenticate a document in order to use it as evidence of what happened. Maybe here, we prove what happened and use that to authenticate the document.

I pointed out that we had hundreds of Jewish people in Israel who survived Auschwitz, who still had the number on their arms, and who could testify to when they arrived at Auschwitz. If we called for all the Jews in Israel who came to Auschwitz in July 1942 to come to the office and show their number, and then compare their numbers to these documents, then we can show that what is in these documents is in fact true and admissible as evidence. Before I even finished, the officer in charge of the investigation of Poland pulled up his sleeve, showed a number on his arm, and said he came to Auschwitz in September 1943. For about three minutes there was complete silence. His number matched exactly what was in the document. I had no idea that this man came from Poland, and certainly had no idea that he was in Auschwitz. I had the impression that his colleagues were also unaware. When you speak of moments during this investigation that are impossible to forget, this is one of those moments.

Another such moment was the one witness we had who, as a child in Auschwitz, had actually been inside a gas chamber with the doors locked. All the children who could would work and be useful for at least a couple of days after arriving at Auschwitz, but the ones who were too weak or too little would be sent to the gas chamber right away. To save having to examine every child, the Germans put up two vertical sticks and a horizontal one, and any child who could walk under the stick was sent to the gas chamber right away. This boy was very little and very weak but he had an older brother who, realizing his brother wasn't tall enough, put stones in the boy's shoes and lifted him up a little when they approached the sticks. But the SS man realized what they were doing, and sent the smaller boy to the gas chamber. The brother was either killed immediately or sent somewhere else.

The witness then described how he and two hundred other children were forced into the gas chamber, and the doors were locked and it was

dark. He described how the children began to sing to give themselves courage. When at first nothing happened, the children began to cry and shout, but then the doors opened. A train had arrived in Auschwitz with potatoes and there were not enough SS men to unload the train. So the SS commander had the glorious idea to use the children before they were killed to unload the train first and kill them afterwards. So they opened the door and took out twenty children who were next to the door, but then they closed the door and killed the other 180 right away. Afterwards, those twenty were all to be killed too. But the commander had said that this particular child had done some damage to one of the trucks. So he was to be flogged before he was killed with the next group. The boy was sent to the camp and the SS man who was to do the flogging pitied the boy and kept him as his sort of valet—to clean his shoes and to make his bath, and he managed to remain alive.

There were many cruel moments in this trial, but when this witness was done, the judges took a fifteen-minute break, and someone from the press took a picture of me in that moment. I was a bit dazed and went into my chambers. Suddenly the door burst open and the young assistant defense counsel, Mr. Dieter Wechtenbruch came into my office hysterically weeping. He was a baby during the war and had joined the defense team to find out what happened during the Holocaust and how. But he did not want people to associate him with acts like that—I didn't either. So I treated him to coffee and I somehow managed to get him to continue with his job. As a prosecutor, you have to stay objective, but I am often asked if there were moments where it was difficult to continue. That was one of them.

Eichmann usually sat in Berlin and just pulled the strings, but sometimes he had to be more hands on. Hungary was on the side of the Germans and the Italians during the war, but towards the end of the war, Admiral Horthy, the Hungarian leader, thought the war was lost and so he wanted to make a separate peace. To prevent this, Hitler sent German troops into Hungary, including Heinrich Himmler, the commander of the SS, to make sure that the Jews did not escape and that there was no resistance to the German power. Eichmann was also sent in person to ensure the Jews were shipped to Auschwitz. Proudly, Eichmann admitted (even as a prisoner awaiting trial) that the first orders he gave were for the Hungarian Jews who came to the gas chambers to write postcards to their friends and families back home, as dictated by Eichmann. They were to say they were in a beautiful country resort with lovely neighborhood excursions and very light work, but that there was not a lot of room, so they had to come as quickly as possible while

rooms were still available. He even had them add for their loved ones to “bring good shoes for the excursions,” so as to supply them to the German army once they arrived at the concentration camps.

I actually found a man in Israel who had such a postcard and was still alive. I managed to find his telephone number and call him up to ask him to come immediately to Jerusalem. It was the day before the Hungarian case and I wanted him to bring this postcard as evidence. He came at eleven o’clock at night. I usually examined all the witnesses very carefully, but he only arrived the night before I needed to call him as a witness, and I still needed him to translate the postcard from Hungarian to Hebrew.

The next day, I called him as a witness and I asked him about the postcard and to tell us about what happened to his family when they arrived at Auschwitz. He said he had a wife, a little daughter, two and a half years old, and a son, thirteen years old. When they arrived at Auschwitz, during the selection process, the officers asked his profession, to which he replied that he was an engineer in the army. The officers sent him to the right because they wanted to use him for some work, and sent his wife and daughter to the left. They then asked his son’s age, to which he replied thirteen and the SS officers, after consulting their commander, sent the boy to run after his mother. In the meantime a hundred or two hundred people had walked in between, and his wife had been swallowed up in the crowd. During his testimony, you could see in the witness’ eyes that he still wondered whether his boy ever found his wife. But he told of his little daughter having a red coat, which he could see as a little red dot getting smaller and smaller. This was how his family disappeared from his life.

At the time of the trial, I had a daughter who was two and a half years old. Two weeks earlier I had bought her a red coat, and the day before this testimony my wife had taken a picture of me with my daughter in her red coat. So hearing this from the witness for the first time cut off my throat completely and I couldn’t utter a sound. The witness recovered and waited for the next question. The judge gave me a signal to continue. The television was on me. But I froze for two or three minutes, and started playing with my documents until I could get it together. To this day, I cannot be in a basketball stadium or a restaurant or in the street without my heart beating fast when seeing a little girl in a red coat.

#### IV. ANSWERING THE DEFENSE

When reviewing the evidence, I had to consider the defense’s

potential legal arguments, as we would in any case. As we went through the millions of documents, we also would send the defense, as standard procedure, any documents that would be of interest to them. One day, Dr. Servatius came to me and said that he had shown these documents to Eichmann who almost fainted when he heard that they had been provided by the Israeli prosecution. He just couldn't understand such a move.

One of the defense's arguments was about the retroactivity of the 1950 law under which Eichmann was tried.<sup>3</sup> Some people said that the Israeli Nazi crimes law of 1950 was an illegal, retroactive law, and therefore that the indictments should be dismissed. You don't have to be a lawyer to understand that it's not a question of law; it's a question of justice. Clearly, if today we do something that is completely legal, and in half a year's time this is retroactively declared to be illegal, especially if the death penalty is imposed, then that looks unjust. But here, the 1950 Nazi crimes law was not "new law" because these acts were already illegal under German law. Even under SS law it was illegal to kill innocent men, women and children. That this was made illegal under the 1950 Nazi crimes law was nothing new. The only difference was that the Nazis had created a loophole by saying that if the victim were a Jew, the aggressor would not stand trial. Justice merely demanded anyone who committed such acts, regardless of the victim, should stand trial. In fact, this same issue of retroactivity was put forth at the Nuremberg trial, where people were charged under regulations and laws put in place by the Allies after the end of the war. There, it was not difficult to get a decision of the court against the defendants. The 1950 Nazi crime law, however, raised this more difficult question about the nature of the victim.

Around the world, people have pointed out that Israel is a Jewish state, and the victims of these crimes and murders were Jews. They argue that because this is a court representing the victims, justice must not only be done, it must also appear to be done—a court representing a victim cannot justly try the man charged. Legally, however, there is no foundation for this argument. The whole idea of the criminal law system is to take the place of people whose families have been murdered or home burglarized, thereby preventing them from taking the law into their own hands for personal revenge. It is a court representing a community, representing a country, representing a state and a society. That court does not take its own personal, private revenge. As I said at

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3. Nazi and Nazi Collaborators (Punishment) Law, 5710-1950.

the time of the trial, if someone is found in Turkey, and is suspected of committing treason against England, it is not a Turkish law that will judge you, it is an English court that will judge you.

Furthermore, these are international crimes. Every court has jurisdiction, but the most proper is the Israeli court. A judge has to be objective, and has to give the accused every possibility to defend himself. No one said the Israeli court failed to do that. But any judge who can listen to evidence like that provided during Eichmann's trial without feeling any emotions is not fit to judge. The fact that this balance was struck by an Israeli court does not discredit it.

Once, right before the trial started, a European professor challenged this idea that an Israeli court was in fact the best venue for trying a Holocaust criminal, by making the point that a court representing the community against which a crime had been committed should not be able to judge the man accused of the crime. Before I could reply, he asked to see the indictment against Eichmann, to further make his point. It showed we had charged Eichmann's department for the murder of Gypsies, Russians, Poles, and Czechs. The professor asked why we included this in the charge, instead of leaving it to the Czech, Russian, or Polish court. I countered by pointing out the hypocrisy in accepting the jurisdiction of a Czech court or a Russian court or a Polish court for crimes against its community, while finding difficulty with a court of a Jewish state doing the same. The man had the decency to blush and admit that he was not sure why he made that distinction. I never heard from him again.

I will never forget the first moment in that courtroom. When the judges came in with the Israeli emblem behind them and Eichmann, whose only purpose in life had been to destroy these people, stood up before a sovereign Israeli court in a sovereign Israeli state; the importance and the meaning of the creation of the state of Israel suddenly became clearer to me than in any moment that had preceded it—more than any parade, or any article, or any other demonstration. And I think that feeling was felt by most people in the country.

Another legal argument the defense presented at trial was that Israeli agents illegally kidnapped Eichmann under Argentinean law. The argument continues that Eichmann was illegally seized not by private citizens, but by officers of the very government trying him. I had anticipated this argument, and therefore carefully researched the issue before the trial started. I tried to find examples of this, not in totalitarian countries, but countries where the rule of law was more important than anything, like America and England. The majority of relevant cases I



found were from America. Very often in the United States someone commits an offense in one state and he escapes to another state where the Sheriff pursues and catches him. The Sheriff then brings the suspect in by force to the state that wants to put the suspect on trial.

That issue actually came before the Supreme Court of the United States of America. There the Court decided if a suspect was "kidnapped" by police officers, even in an illegal manner, the court's jurisdiction remains because the court has general jurisdiction over the suspect. If the seizure was illegal, then those who seized the defendant could be charged, but that would not limit the court's jurisdiction over the defendant.<sup>4</sup> Similarly, in England, a deserter from the British army was captured in Belgium, and illegally brought back into England and court-martialed. He too argued that the illegal seizure invalidated the court's jurisdiction, but the English court gave the same reply: such an act does not interfere with the court's jurisdiction. All of these points were brought forward by the defense and I think rightly rejected.

#### V. EICHMANN DURING TRIAL

I would like to now paint a picture of what kind of man Eichmann was at the time of the trial. As part of the prosecution's case, we wanted to present a short, forty-five minute documentary film to the court about the gas chambers and the death camps at Bergen-Belsen, and others. For three days and three nights I watched all the films that existed from Germany, Poland, Russia, England, America, Israel, and others. I prepared the forty-five minute show, and then out of fairness to the accused, we showed it to him and his lawyers in the courtroom the night before it was to be presented in court.

I knew the film, so I decided to watch Eichmann instead to see how he would react when he saw the thousands of emaciated bodies piled up, etc. Throughout, he was completely passive, no movement at all, until suddenly he spoke in a very excited manner to the warden next to him. When the show was over, I asked the warden what Eichmann said to him. The warden explained that Eichmann was angry because he had been promised he would never be taken into the courtroom unless he wore his dark blue suit, but they had brought him in wearing his gray suit with a gray pullover. Eichmann protested most violently, and lectured the warden that a promise like that shouldn't be made if it wasn't going to be kept. That was the only thing that bothered Eichmann when he saw this footage. This was not decisive evidence,

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4. *Ker v. Illinois*, 119 U.S. 436, 444 (1886).

but typical behavior for him.

Towards the end of the trial, we presented evidence that Eichmann said to friends, “I know the war is lost but I am still going to win my war,” and then he went to Auschwitz to get the death rate increased from ten thousand a day to twelve thousand a day. And to Willem Sassen he boasted that if he managed to kill eleven million Jews, then he would have done something important for history. During the Nuremberg trial, another friend of Eichmann’s testified that Eichmann said, if he died, he will “leap laughing into the grave because the feeling that he had 5 million people on his conscience would be for him a source of extraordinary satisfaction.”<sup>5</sup> Clearly this was his obsession.

Towards the end of the war, someone proposed that every German soldier who was a quarter Jewish—one Jewish grandfather or one Jewish grandmother—should either be castrated or sent to a concentration camp. Eichmann supported that proposal wholeheartedly, in a most violent and extreme manner. The one who opposed it was Wilhelm Keitel, the commander in chief of the German army, not for humanitarian reasons, but because he thought it would weaken his army. Thousands of soldiers fighting all during the war together would be included, and it would be demoralizing for them and all of the German army. Hitler supported Keitel, yet Eichmann did everything he could to support the plan. Eichmann didn’t care whether it would help the German army or not, which was typical for him.

## VI. ARENDT’S CRITICISM

I would now like to comment on Hannah Arendt’s book about the trial.<sup>6</sup> She did not say there was no justification to judge Eichmann or that he wasn’t guilty. Instead, she argued that we painted him so evil to somehow make him a more important figure than he was. Even though he was not some minor officer who carried out orders, there is still this criticism.

Hannah Arendt came to Israel a few days before the trial started. I did not know about her, but somebody told me that a philosopher from America had come to Israel wanting to write something against the trial. That sounded a bit strange to me that someone before the trial starts wants to write something against the trial. I said if she is here, I will gladly meet her and if there are some problems I’ll discuss them with

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5. *Nuremberg Trial Proceedings: 26th Day*, AVALON PROJECT (2008), available at <http://avalon.law.yale.edu/imt/01-03-46.asp>.

6. HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (1963).

her. Two days later, someone told me that she was not prepared to speak to anyone with the prosecution, which I found very surprising. She did not have to accept everything that we said, but the fact that she was not prepared to speak to anyone of the prosecution, that seemed very strange. I said she can still come to the courtroom every day and I gave instructions that she should have complete access to all of the documents handled by the prosecution and the defense so that she could form her own opinion and write whatever she wanted afterward.

Afterward, I did not think much about it, but then when her book appeared, not only did she express some rather strange ideas, but what is not generally known is that she quoted evidence and documents in a completely falsified manner. For example, when Hungary's Admiral Horthy, the Hungarian leader, thought the war was lost he wanted to make a separate peace. Furthermore, he did not want to take part in the deportation of half a million Jews that were living in Hungary. So Hitler met Horthy and using threats and promises tried to convince him to remain on the side of the Germans, and to agree to the deportation of the Jews. At first Horthy did not agree, but then he caved to the threats, with some conditions. One condition to cooperation with the effort to deport Hungarian Jews was that the Germans should agree that 8,700 Jewish families living in Budapest should be able to go to neutral countries. Hitler agreed, not for humanitarian reasons, but for the rest of the half million Jews that he wanted to deport to Auschwitz.

Files we received from all the ministries, including the Ministry of Foreign Affairs, of the very cooperative German government confirmed the agreement. In these documents we found a telegram sent by the German ambassador to Hungary to the Foreign Minister of Germany. The telegram described an agreement between Hitler and Horthy, including the 8,700 families from Budapest, but added that the local representative of the SS, Eichmann, was very upset when he heard about the arrangement between Hitler and Horthy. Eichmann felt that these 8,700 families might be important biological material and they might, from these neutral countries even, come to Palestine and help to create their race again in Palestine. Therefore Eichmann gave instructions to force the deportation of the Jews from Budapest to Auschwitz with such a speed that the visas for the 8,700 families to the neutral countries could not be arranged in time. I was in charge of the witnesses testifying about Hungary and I personally submitted this telegram from the Ambassador to the Foreign Minister, particularly because it showed that Eichmann was not just an obedient soldier—here he was even trying to countermand a decision by Hitler, the Führer

himself. This was someone driven by his complete obsession, fighting his own war.

Hannah Arendt wrote about my submitting this telegram, arguing that the telegram only shows that Eichmann was not prepared to obey Hitler's orders because they were in contrast to the Führer's original ideas and philosophies—either she misunderstood the telegram, to which she had full access, or she was deliberately wrong. She added that I apparently did not understand that for Eichmann Hitler was a semi-god and everything ordered by Hitler was more important than anything else. But this just makes Eichmann's actions worse, because Hitler was the one who made the arrangement in the first place. He was the one who agreed to the exile of the families to neutral countries; so Eichmann tried to thwart that order to prevent a few thousand Jews from reaching exile and avoiding Auschwitz.

This was only one example—there are others. Arendt said, for instance, that by painting Eichmann so black we decreased the guilt of Hitler, Himmler, and others. This is complete nonsense because, of course, Hitler and Himmler are guiltier because they originated the idea. Eichmann was responsible for carrying it out. The fact that they saw to it that all other heads of department were changed and they kept Eichmann in his position knowing of his obsession does not decrease their guilt—instead, it increases it.

Another example had to do with evidence we presented at trial that some Jews in certain cities in Poland cooperated with the Nazis under duress: the Nazis approached Jewish leaders daily asking for lists of Jews to send to the death camps, hinting that in exchange their families would not be deported for the time being. Some refused to take part in this, some people agreed. It is very difficult in my mind to criticize people like that. These Jewish leaders also said that they thought the war was approaching the end and if they refused, the Nazis would have killed everyone right away, so that was a way of buying time. Yet even if they did it to save themselves and their families, that's not something that one can really criticize. Nonetheless, we presented the evidence that some Jewish leaders did agree. Hannah Arendt wrote that if the prosecutors had placed more emphasis on this evidence, then it might have been mitigating for Eichmann, because it would have shown that under certain circumstances people do illegal acts if they feel it necessary, or that they had no choice. I thought this point of view was very strange when I read it, not least because Hannah Arendt was a Jewish person.

This position is even more bizarre, when considering the defense

counsel's reaction to similar evidence available during the trial. The defense counsel, Dr. Servatius, who was of course not a Jew, came to me one day during the trial and showed me about twelve letters written by Israeli Jewish people who had offered themselves to be witnesses for the defense. They were volunteering not so much to help Eichmann, but to take revenge on those Jewish people who betrayed them. There were some people in every country of Europe who tried to save their families and friends. So some tried to pay bribes to Nazis, or the local police, or soldiers. Some succeeded and some did not. Those who did not succeed were angry at those who did succeed. Sometimes they accused them of treason and of doing improper and immoral things. This was true in Hungary and other countries as well. So there were some Jews who wanted to take revenge against the ones who succeeded, and they thought, like Hannah Arendt said, this was going to be a mitigating circumstance. So they wrote to the defense counsel and said they were prepared to testify as witnesses for the defense.

In presenting this information to me, Dr. Servatius said that if he thought that these witnesses would help his client he would have called them, but before the Nazis killed the bodies of their Jewish victims, they destroyed their souls. This cat and mouse game that the Nazis played with some Jewish leaders destroyed their souls, and that is in fact an aggravating fact and not a mitigating one. Therefore, the defense refused to call these witnesses. I appreciated that very much and agreed that it certainly would not have been mitigating evidence, but it might have done great damage by causing people to forget about Eichmann. They would have started arguing amongst themselves. I thought Servatius' decision was decent, proper, and logical. So, it was surprising to me, when I read Hannah Arendt's book, that Servatius, a non-Jew, really understood more than Hannah Arendt did.

Hannah Arendt is regarded as quite an important philosopher in many ways. Sometimes people tell me she had close Nazi friends, and a romantic relationship with a Nazi professor; but I am not prepared to make such a statement, or to even believe such things without any evidence. My impression of her (about which I cannot be sure) was that she had this preconceived idea that we took Eichmann—not the highest general or most important player—and we tried to show that he was responsible for everything, thereby increasing his guilt. So any document or evidence not fitting within these preconceived ideas of hers, she tried to somehow change into something else.

Jacob Robinson, from America, wrote a book about Hannah

Arendt's account called *And the Crooked Shall Be Made Straight*.<sup>7</sup> Though there, Robinson did not take an active part in the trial in questioning the witnesses. Three of us, Hausner, myself, and the DA of Tel Aviv, questioned the witnesses and made the arguments in court while there were some other people, like Robinson, who just helped prepare the legal arguments. Robinson was an expert on history and international law, and for 250 pages he wrote all about the Hannah Arendt book, describing on page after page how she had strange ideas and falsified the most important documents and pieces of evidence. Whenever you read Hannah Arendt's book, do so with great caution, to put it mildly.

## VII. EICHMANN'S DEMISE

Finally, I would like to say a few words about Eichmann's sentence and execution. Following the trial, Eichmann filed an appeal, which was dismissed, and then he made a request for a pardon. As the prosecutors, we discussed what the process would be if the President did not give Eichmann the pardon. Some people in the prosecutor's office said we should wait three to four weeks before executing him. I was against that because I was concerned that once the judgment was final, then there was a great danger that someone, whether it be in Bulgaria or Hawaii or South America, would hold the process hostage by kidnapping and threatening to kill a Jewish adult, or even child. So I suggested that once the President rejected the request for a pardon, it should be announced at 11:00pm and then carried out at midnight. I was not sure whether or not the government would take my suggestion, and I did not let my wife know that it was a possibility.

That night I was in my bathroom, and at 11:00pm, my wife suddenly called out that the President had rejected Eichmann's pardon request, and I knew that the moment of his execution had arrived. This was a moment I will never forget. I had no doubts that the death sentence was justified and that Eichmann was the right person to be sentenced to death; yet, if you see a man every day for two years, somehow you feel more intimately involved, so this result was not so easy.

I am very often asked what I think the impact of the trial was. In Israel, before the trial, many teachers and schoolmasters told me that our young people didn't want to hear about the Holocaust because they

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7. JACOB ROBINSON, *AND THE CROOKED SHALL BE MADE STRAIGHT: THE EICHMANN TRIAL, THE JEWISH CATASTROPHE, AND HANNAH ARENDT'S NARRATIVE* (1965).

felt a bit ashamed. The young Israelis understood being hurt or killed fighting but they could not understand how millions of people could go to their death and be slaughtered without defending themselves, without an uprising, without doing something to try. We wanted to show our young people that there was no real reason to be ashamed of this because of the systematic and almost scientific way the Germans managed to deceive their victims—not just Jews, but Gypsies, Russians, etc. For example, I mentioned the postcard Eichmann forced the Hungarian Jews to write, misleading people up to the very last minute and therefore preventing them from defending themselves. Furthermore, in the Warsaw ghetto, when it became clear to the Jews that there was an intention to send them all off to their deaths, they rose up and fought up to the last minute—to the last man—all of them were killed fighting the Germans. They did resist with incredible bravery and courage. After the trial, teachers told me that our young people wanted to visit Poland and the death camps. They were now interested in Jewish history and in European Jewish culture.

Another very important development from the trial was in Germany. There were prosecutors who always wanted to bring cases against Nazis, especially regarding the death camps, but they were never given encouragement or budgets. Similarly, teachers wanted to teach about the Holocaust in schools, but they never had the support. Naturally, parents who were Nazis certainly didn't want their children to learn about what happened. Yet even the ones who were not Nazis feared their children coming home and asking why they failed to rebel, demonstrate, or do anything to express their dissatisfaction with the Nazis. The Eichmann trial, however, brought the story of the Holocaust into their homes every day for an hour or two, so no one could keep the teachers and prosecutors silent any longer. Suddenly there was a terrific development on Holocaust education in the German schools.

In addition, almost all of cases brought by German prosecutors regarding the death camps: Auschwitz, Majdanek, Treblinka, Belzec and Sobibor were brought after the Eichmann trial, and judgments rendered with German meticulousness. Some criticized them for waiting so long and for too lenient punishment, but I never felt that waiting too long was a problem. I felt it particularly important in the face of Holocaust deniers that we now have detailed documents from German sources of what happened in the death camps. Such denials are libelous propaganda, exaggerating that things really never took place.

## VIII. AFTERWORD

I am regarded as an incurable optimist, but even I am sometimes surprised by the developments in the fifty years since the Eichmann trial. Interest in this trial grows from year to year, all over the world. I still sometimes find it surprising the Holocaust was mentioned in other trials, like Nuremberg, but always marginally—it was never the point. In Eichmann's trial, the Holocaust was the central issue and was examined from every point of view. I have invitations from Japan, Australia, Sweden, Hungary, and everywhere they are particularly interested in the Holocaust.

I find the interest in Japan most moving; they are friends of Israel and even have a Holocaust Education Center with a rose garden and exhibit dedicated to Anne Frank. Everyday two hundred Japanese children come to this museum to learn about the Holocaust. The museum brought roses from the Frank family home in Holland to the museum in Japan and planted a garden dedicated to her. A few years ago, they invited me to this museum and planted a tree in my name next to Anne Frank's roses. Then, a few months ago, I received a blossom from my tree, which was very moving. The museum has been so successful that, ten years later, they built an even bigger facility not far from the original one, and asked me to come to Japan for the opening.

When I arrived in Japan they asked me to light the flame commemorating the opening of the museum to be kept in Kyoto. The ceremony was to be in front of friends of the community, and they asked that I give a short lecture on the future of Japanese/Israeli relations. I imagined the group would be about thirty or forty people, but when I entered the auditorium there were two thousand Japanese people, including three hundred children beautifully dressed, who all stood up and sang, in perfect Hebrew, the famous Israeli song *We Bring Peace to You*. I had tears in my eyes, and before I spoke, they showed a film they had prepared about my life. They had called me a few weeks before I came asking for pictures of my life from childhood, to the State Attorney's office, to the Eichmann trial, and through to being a judge on the Supreme Court. I asked them why they needed these pictures, and they said that their young people would want to know about the person chosen to open this museum. I had forgotten all about this request, and certainly did not realize that they had used them to prepare this film. Of course, this was a very moving experience.

It is also a particularly moving experience to see the developments in Germany over the years. Germany is made up of a number of provinces now, and each has its own parliament. But every parliament



in Germany decided to devote one day a year to the Holocaust. Many of these provinces have asked me to come speak to their parliament about what I think is the most important part of what happened in the Holocaust. A few months ago I was in Bürchen, where the president of the parliament asked me to join him in planting trees and flowers to commemorate the victims of the Holocaust, and to speak before their parliament. They also asked me to meet with 400 students, seventeen and eighteen years old, to share my memories, because they want their children to learn that things like that should never happen again. They all asked very well prepared and relevant questions, and the newspapers reported that the kids were impressed by how different it was to hear what happened from someone directly involved in the case, as opposed to just reading the history of it. This gives me hope that these kids really have learned a lesson from the Eichmann trial.

Of course there is anti-Semitism, but there is interest all over the world that what happened during the Holocaust should never happen again. I find this encouraging. Bad things will happen, but the fact that there is this interest—this tendency—to avoid it, is a lasting effect of the Eichmann trial, and provides hope that things like that will never happen again.